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With Attach A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PETERS BROTHERS FARMS,
a Michigan Co-Partnership,

Plaintiff,

v.

SYNGENTA CROP PROTECTION, INC.,
A Foreign Corporation,

Defendants.

) Case: 2:08-cv-10054
) Judge: Zatkoff, Lawrence P
) Referral MJ: Morgan, Virginia M
) Filed: 01-03-2008 At 03:14 PM
) REM PETERS BROTHERS FARMS V. SYNGEN
) TA CORP (TAM)

) **NOTICE OF REMOVAL**
) **Case No. _____**

) (Removed from the Circuit Court for the County
) of St. Clair, State of Michigan, Civil Action File
) No. K-07003121 NP)

To: David J. Weaver
Court Administrator/Clerk of Court
United States District Court for the Eastern District of Michigan
Theodore Levin U.S. Courthouse
231 West Lafayette Boulevard, Room 564
Detroit, Michigan 48226

NOW COMES Defendant Syngenta Crop Protection, Inc. ("Syngenta") in the above-captioned matter which is currently pending in the Circuit Court for the County of St. Clair, State of Michigan, by and through counsel, and files this Notice of Removal of the foregoing action to the United States District Court for the Eastern District of Michigan pursuant to 28 U.S.C. §§ 1441 and 1446. Syngenta respectfully shows the Court the following:

1. On December 7, 2007, Plaintiff's initial pleading, the Complaint, was served upon Syngenta by certified mail addressed to Syngenta's principal place of business in Greensboro, North Carolina. The Complaint sets forth Plaintiff's asserted claims for relief in the Circuit Court for the County of St. Clair, State of Michigan. True and correct copies of the Summons and Complaint are attached as Exhibit A.

2. The time for filing an Answer or other response to the Plaintiff's Complaint has not expired.

3. The foregoing action is a civil action in which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332. Syngenta is a Delaware corporation with its principal place of business in North Carolina. Plaintiff is a Michigan co-partnership with its principal place of business in Michigan. (Exhibit A, paragraph 1 of Plaintiff's Complaint). As a result, complete diversity of citizenship exists between the parties.

4. Further, the amount in controversy between the parties exceeds \$75,000, exclusive of fees, interests and costs, as Plaintiff has asserted in its Complaint that its damages are in excess of \$100,000. (Exhibit A, paragraph 13 of Plaintiff's Complaint).

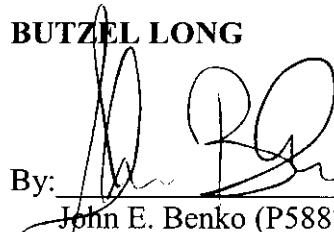
5. Accordingly, because of the complete diversity of citizenship between the parties and the amount in controversy, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332, and the action is removable under the provisions of 28 U.S.C. §§ 1441 and 1446.

6. Contemporaneously with the filing and service of this Notice of Removal and consistent with 28 U.S.C. § 1446(d), Syngenta has served its "Notice of Filing of Notice of Removal of Action to Federal Court," with a copy of this Notice of Removal, upon the Plaintiff and the Clerk of the Circuit Court for the County of St. Clair, State of Michigan.

WHEREFORE, Syngenta prays that the above action now pending in the Circuit Court for the County of St. Clair, State of Michigan be removed to the United States District Court for the Eastern District of Michigan.

Respectfully submitted,

BUTZEL LONG

By: 

John E. Benko (P58874)
150 West Jefferson, Suite 100
Detroit, Michigan 48226
(313) 225-7000

Dated: January 3, 2008

Counsel for Defendant Syngenta Crop Protection, Inc.

OF COUNSEL:

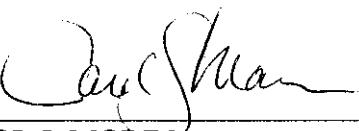
Stanley B. Green
NC State Bar No. 25539
Dawn T. Mistretta
NC State Bar No. 31691
Womble Carlyle Sandridge & Rice, PLLC
A Professional Limited Liability Company
3500 One Wachovia Center
301 South College Street
Charlotte, North Carolina 28202-6037
Telephone: 704-331-4986
Facsimile: 704-343-4851
E-mail: sgreen@wCSR.com

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the attached **NOTICE OF REMOVAL** by placing said copy in a postage paid envelope and addressed to the persons listed below at the referenced place and address and by depositing said envelope and its contents in the United States mail.

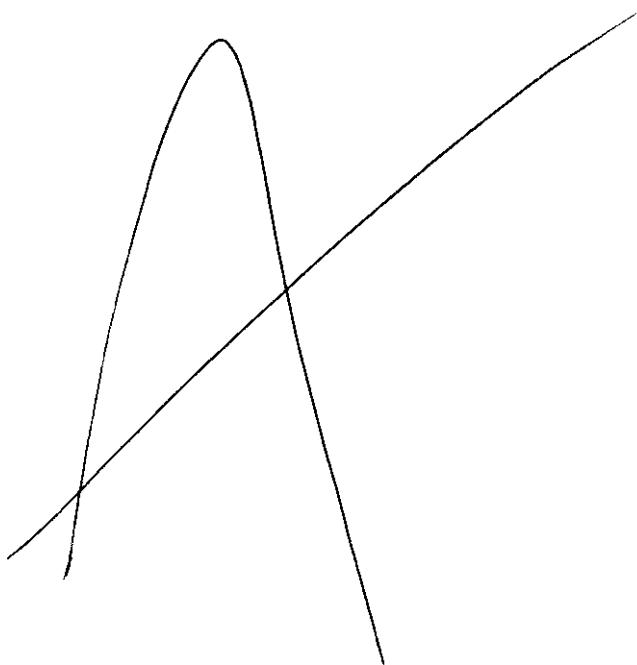
Bernard P. Penzien
124 N. Almont Avenue
Imlay City, MI 48444
Attorney for Plaintiff

This the 3rd day of January, 2008.



CAROL J. MORIN

976954



St. Clair County Court Docket Details

Page 1 of 1

OPEN

07-003121-NP JUDGE KELLY

File 12/3/2007

Adj Date

Close

Party Info Events

New Se

P 001 PETERS BROTHERS FARMS,,
2807 STAPLETON ROAD
MEMPHIS, MI 48041
ATY: PENZIEN, BERNARD P.,

VS D 001 SYNGENTA CROP PROTECTION INC.,
1222 BUCKINGHAM RD.
HASLETT, MI 48840

P-23325 (810) 724-6408

Approved, SCAO

STATE OF MICHIGAN

JUDICIAL DISTRICT
31ST JUDICIAL CIRCUIT

SUMMONS AND COMPLAINT

Original - Court
1st copy - Defendant2nd copy - Plaintiff
3rd copy - Return

CASE NO.

K-W 003121-NP

Court address 204 MCMORRAN BLVD., PORT HURON, MI 48060

Plaintiff name(s), address(es), and telephone no(s).

PETERS BROTHERS FARMS, a Michigan Co-Partnership,
2807 STAPLETON ROAD, MEMPHIS, MI 48041

Court Telephone no. 810-985-2200

Defendant name(s), address(es), and telephone no(s).

SYNGENTA CROP PROTECTION, INC., a Foreign
Corporation, 1222 BUCKINHAM RD., HASLETT, MI 48840

Plaintiff attorney, bar no., address, and telephone no.

BERNARD P. PENZIEN (P23828) 124 N. ALMONT AVENUE,
IMILAY CITY, MI 48444 (810) 724-6408

SUMMONS | NOTICE TO THE DEFENDANT:

In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. YOU HAVE 21 DAYS after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued

This summons expires

Court clerk

12-307

3-3-08

MARILYN DUNN

*This summons is invalid unless renewed or before its expiration date.

COMPLAINT | Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

Family Division Cases

There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:
 Docket no. _____ Judge _____ Bar no. _____

General Civil Cases

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:
 Docket no. _____ Judge _____ Bar no. _____

VENUE

Plaintiff(s) residence (include city, township, or village)
MEMPHIS, MI

Defendant(s) residence (include city, township, or village)
HASLETT, MI

Place where action arose or business conducted
ST. CLAIR COUNTY, MI

I declare that the complaint information above and attached is true to the best of my information, knowledge, and belief.

Date

COMPLAINT IS STATED ON ATTACHED PAGES. EXHIBITS ARE ATTACHED IF REQUIRED BY COURT RULE.

If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

MC 01 (9/96) SUMMONS AND COMPLAINT MCR 2.102(B)(11), MCR 2.104, MCR 2.105, MCR 2.107, MCR 2.113(C)(2)(a), (b), MCR 2.206/A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

PETERS BROTHERS FARMS,
a Michigan Co-Partnership,

Plaintiff,

vs.

Case No. K - 07 0 0 3 1 2 1 N/P
Hon.

DANIEL J. KELLY

SYNGENTA CROP PROTECTION, INC.
a Foreign Corporation,

Defendant,

Bernard P. Penzien (P23325)
Attorney for Plaintiff
124 N. Almont Avenue
Imperial City, MI 48444
(810) 724-6408

COMPLAINT

NOW COMES your Plaintiff, PETERS BROTHERS FARMS, a Co-Michigan Partnership, by and through its attorney, Bernard P. Penzien, and states unto this Honorable Court by way of a Complaint against the Defendant, SYNGENTA CROP PROTECTION, INC., as follows:

GENERAL ALLEGATIONS

1. That the Plaintiff is a Michigan Co-Partnership doing business within the State of Michigan with its principal place of business located at 2807 Stapleton Road, Memphis, MI 48041. (Hereinafter referred to as "Peters".)
2. That the Defendant, Syngenta Crop Protection, Inc., is a duly incorporated corporation and is a foreign corporation and sells its products throughout the State of Michigan. (Hereinafter referred to as "Syngenta".)

3. That Peters have for a number of years been engaged in the business of farming with its principal crops being corn and soy beans with most of their farming activities being in the County of St. Clair.

4. That Syngenta is a manufacturer of a certain product by the name of Lumax Herbicide.

5. That Peters have treated their crops and more particularly corn with various chemicals for weed control and in the year 2007 used the Defendant, Syngenta's product called Lumax.

COUNT I
WARRANTY

6. That Plaintiff hereby incorporates paragraphs 1 - 5 in the general allegations to the same effect as if fully set forth herein.

7. That the Defendant's, by advertisements, oral representations and written warranties, represented that Lumax was an appropriate chemical to apply for weed control on corn.

8. That in consideration of the sale and as part of the contract the Defendant through their Michigan Representative did provide labels, oral statements, written warranties and did represent that Lumax was a safe and proper chemical to be used for weed control on corn grown on the Peters farms and did further represent that there would be no problem in rotating to soy beans in the 2008 crop year.

9. That as a result of said representations and warranties and the Plaintiff's reliance thereon, the Peters did purchase from Syngenta a sufficient quantity of Lumax to treat approximately 3,500 acres of corn.

10. That the Peters did treat approximately 3,500 acres of corn in accordance with

the specific recommendations for application.

11. That as a result of the application of Lumax to the 3,500 acres of corn, the Plaintiffs lost in excess of 500 acres of their corn crop and that the Lumax so damaged the remaining approximately 3,000 acres so that the Peters lost approximately 20% of the crop harvest.

12. That the said Lumax applied to Plaintiffs corn was specifically not as represented and not warranted, in fact, the Plaintiffs specific representation and warranty relative to the Peters being able to plant soy beans on the said acreage in the 2008 year was false and that Syngenta through their agents have now informed Peters that there would be a carry over and that under no circumstances should they follow up with soy beans in the 2008 year on any acreage where Lumax was applied, all contrary to the specific oral representation and the written warranties provided to the Peters prior to the purchase of the product and subsequent application.

13. That said warranties and oral representations were relied upon by the Peters and that as a result of the application of Lumax the Plaintiffs were damaged in an amount well in excess of One Hundred Thousand & 00/100 dollars (\$100,000.00).

Wherefore Plaintiff prays for a Judgment together with costs, interest and attorney fees, in excess of One Hundred Thousand & 00/100 dollars (\$100,000.00).

COUNT II
FITNESS FOR INTENDED USE.

14. That Plaintiff hereby incorporates paragraphs 1 - 13 of the general allegations and of Count I to the same effect as if fully set forth herein.

15. That Peters prior to the purchase of the said Lumax did inform Syngenta and its agents employees that they intended to use the same for control of weeds on corn for

the year of 2007 and further that they intended to plant soy beans on the acreage in the 2008 crop year.

16. That Syngenta through its agents, servants and employees did indicated that Lumax was fit for Plaintiffs Intended use as weed control on corn.

17. That the representations of Syngenta through its warranties and as made by agents and employees were false and as a result Plaintiff has been damaged as set forth above.

Wherefore Plaintiff prays for a Judgment together with costs, interest and attorney fees, in excess of One Hundred Thousand & 00/100 dollars (\$100,000.00).

COUNT III
IMPLIED WARRANTY FOR FITNESS FOR A PARTICULAR PURPOSE

18. That Plaintiff hereby incorporates paragraphs 1 - 17 of the general allegations, Count I and Count II to the same effect as if fully set forth herein.

19. That the Peters did meet with an employee of the Defendant, Syngenta, and did then and there inform them that they were looking for a chemical for weed control on corn that was appropriate to apply without harming their corn crop and so they could follow up in the 2008 year with soy beans on the same ground.

20. That the Peters did rely on the Defendants skill and judgment in selecting and furnishing a chemical suitable for said purpose.

21. That Syngenta was at all times aware of Plaintiffs reliance on Syngentas skill and judgment in selecting and furnishing suitable goods.

22. That Syngenta specifically warranted that said Lumax was fit for the particular purpose of which it was required.

23. That Plaintiff's shortly after application knew that the said goods were defective

on sound and generally wholey unfit for the particular purpose required by Plaintiff.

24. That the Plaintiff immediately notified Syngenta of the breach of said warranty and formally revoked acceptance of the said goods.

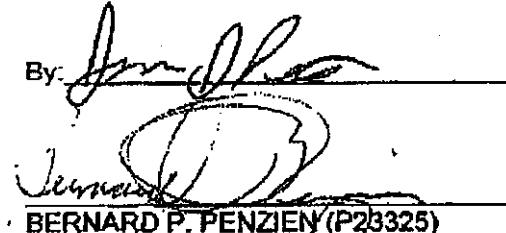
25. That as a result Plaintiff has been damaged in an amount in excess of One Hundred Thousand & 00/100 dollars (\$100,000.00).

WHEREFORE Plaintiff demands judgment for its damages as found by the trier of fact in such amount as shall be proven in excess of One Hundred Thousand & 00/100 dollars (\$100,000.00).

Dated: 11-12-07

PETERS BROTHERS FARMS,
a Michigan Co-Partnership

By:


Bernard P. Penzien (P23325)
Attorney for Plaintiff
124 N. Almont Avenue
Imlay City, MI 48444
(810) 724-6408

v. 11/04)

CIVIL COVER SHEET County in which this action arose ST. CLAIR COUNTY

44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

PETERS BROTHERS FARMS, a Michigan Co-Partnership
2807 Stapleton Rd., Memphis, MI 48041

(b) County of Residence of First Listed Plaintiff St. Clair County, Michigan
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Bernard P. Penzien (P23325)
124 N. Almont Ave., Imlay City, MI 48444 (810) 724-6408

DEFENDANTS

SYNGENTA CROP PROTECTION, INC., a Foreign Corporation
410 Swing Road, Greensboro, NC 27409-2012

County of Residence of First Listed Defendant Guilford Cnty, N. Carolina
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
John E. Benko (P58874) Butzel Long, 150 W. Jefferson, Ste. 100,
Detroit, MI 48226 (313) 225-7051

II. BASIS OF JURISDICTION (Select One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Select One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State <input checked="" type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 6 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Select One Box Only)

CONTRACT	TORTS	FORFEITURE	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Case: 2:08-cv-10054	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Judge: Zatkoff, Lawrence P	
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Referral MJ: Morgan, Virginia M	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Filed: 01-03-2008 At 03:14 PM	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 REM PETERS BROTHERS FARMS V. SYNGENTA CORP (TAM)	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Mgmt. Relations Act	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input checked="" type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 891 Agricultural Acts
CIVIL RIGHTS		<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 892 Economic Stabilization Act
PRISONER PETITIONS		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
			<input type="checkbox"/> 895 Freedom of Information Act
			<input type="checkbox"/> 900 Appeal of Fee Determination Under Access to Justice
			<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Select One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C Sections 1441, 1446 and 28 U.S.C. Section 1332

Brief description of cause:

Product Liability Crop Damage Case

VI. CAUSE OF ACTION

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ \$100,000.00 CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

January 3, 2008

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

SIGNATURE OF ATTORNEY OF RECORD

RSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
